

No. 12854

United States
Court of Appeals
for the Ninth Circuit.

In the Matter of

WILLIAM B. MURRAY,

Appellant.

Transcript of Record

Appeal from the United States District Court
for the District of Oregon.

FILED

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAME AND ADDRESS OF ATTORNEY

WILLIAM B. MURRAY,

525 Failing Building,
Portland 4, Oregon,

Attorney for Appellant.

In the United States District Court for the
District of Oregon

Civil 5677

ADDISON G. HALL,

Plaintiff,

vs.

HENRY GARDNER,

Defendant.

DOCKET ENTRIES

1950

June 29—Filed complaint.

June 29—Issued summons to marshal.

July 12—Filed summons with marshal's return.

Aug. 14—Filed answer.

Sept. 6—Entered order setting for pre-trial conference on Sept. 14, 1950. McC.

Oct. 24—Entered order setting for pre-trial conference on Oct. 30, 1950. McC.

Oct. 27—Entered order setting for pre-trial conference on Nov. 6, 1950. McC.

Nov. 6—Record of pre-trial conference. McC.

Nov. 14—Entered order setting for trial on November 30, 1950, 10 a.m. McC.

Nov. 27—Issued subpoena & 3 copies to atty. for plaintiff.

Nov. 30—Record of trial before court & order reserving defts motion to dismiss. McC.

Dec. 1—Record of trial before court & order reserving defts motion to dismiss (renewed) arguments & order reserving decision. McC.

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Dec. 5—Filed memorandum of decision. McC.

Dec. 9—Filed stipulation for order to withdraw exhibits.

Dec. 9—Filed & entered order to withdraw exhibits. McC.

Dec. 11—Entered order setting for hearing on atty. fees on Dec. 18, 1950, 10 a.m. McC.

Dec. 16—Entered order resetting for hearing on atty. fees on Dec. 22, 1950, 10 a.m. McC.

Dec. 29—Filed & entered Findings of Fact & Conclusions of Law. McC.

Dec. 29—Filed & entered Judgment. McC.

Dec. 29—Entered two separate judgments in Lien Docket.

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Jan. 6—Entered two amended judgments in Lien Docket.

Jan. 4—Filed stipulation re attorney fees.

Jan. 4—Filed motion for order vacating judgment of Dec. 29, 1950.

Jan. 4—Filed & entered order vacating judgment of Dec. 29, 1950. McC.

Jan. 4—Filed & entered Judgment order (amended). McC.

Jan. 15—Filed cost bill of plntf. (Costs taxed at \$79.66.)

Jan. 15—Filed praecipe for execution.

Jan. 16—Issued execution—to marshal.

Jan. 16—Filed plaintiff's motion for warrant of arrest and affidavits.

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Jan. 16—Filed & entered order for issuance of warrant of arrest. Fee.

Jan. 16—Issued warrant of arrest to marshal.

Jan. 17—Record of hearing & order fixing bond at \$9,000.00 & committing deft. in default of bond. Fee.

Jan. 17—Issued commitment in default of bail to marshall.

Jan. 22—Filed warrant of arrest—Henry Gardner in custody of U. S. Marshal.

Jan. 23—Filed Commitment in default of bail, with marshal's return.

Jan. 23—Filed transcript of proceedings Nov. 30—Dec. 1, 1950.

Jan. 23—Filed excerpts from proceedings Jan. 22, 1951.

Jan. 22—Record of hearing in contempt proceedings against Wm. B. Murray, Atty. for deft. order finding in contempt, order dismissing contempt proceedings after restitution & order referring to discipline Committee of Bar of this Court. Fee.

Jan. 24—Filed defendant's motion for release from custody, to quash order for commitment, order for arrest, order to give bail, order to impound fund, order for deft's. atty. to return funds & for an order allowing attorney fees.

Jan. 24—Filed defendant's brief.

Jan. 24—Filed plaintiff's motion for examination of judgment debtor.

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Jan. 24—Filed plaintiff's motion to apply monies to satisfaction of judgment.

Jan. 25—Filed order fixing bond & for commitment. Fee.

Jan. 24—Entered order denying defendant's motion for release from custody, etc. Fee.

Jan. 25—Record of hearing.

Jan. 26—Filed motion of defendant for release from custody.

Jan. 26—Filed & entered order releasing defendant from custody & restraining deft. from leaving jurisdiction. Fee.

Jan. 26—Entered order allowing Wm. B. Murray to withdraw as counsel for defendant.

Jan. 31—Filed notice of appeal of Wm. B. Murray from charge of contempt.

Jan. 31—Filed bond on appeal.

Feb. 5—Filed points on which appellant will rely.

Feb. 5—Filed designation of contents of record on appeal.

Feb. 5—Filed transcript of proceedings Jan. 16-17-22-24-25-26, 1951.

Feb. 6—Filed order denying defendant's motion for release from custody, etc. Fee.

Feb. 7—Filed transcript of proceedings Jan. 16, 1951.

Feb. 8—Filed affidavit of service of points on which appellant will rely, etc.

[Title of District Court and Cause.]

(Amended)

JUDGMENT ORDER

The above-entitled cause having come on regularly for trial on November 30, 1950, and December 1, 1950, plaintiff appearing in person and by and through William M. Dale, Jr., of his attorneys, and defendant appearing in person and by and through George C. Reinmiller and Marshall Hjelte, of his attorneys, and the Court having heard the testimony and having examined and considered the evidence offered by both parties, together with the agreed facts as set forth in the pre-trial order herein, and the cause having been submitted to the Court for decision, and the Court being fully advised in the premises and having made and caused to be filed herein its Findings of Fact and Conclusions of Law; now therefore

It Is Hereby Ordered, Adjudged and Decreed:

(1) Judgment is entered in favor of the plaintiff and against the defendant in the sum of \$6,775, with interest at the rate of 5% per annum on the sum of \$7,000, from March 25, 1949, to and until December 19, 1949, and at the same rate of interest on the sum of \$6,900, from December 20, 1949, to and until August 29, 1950, and at the same rate of interest on the sum of \$6,850, from August 30, 1950, to and until September 10, 1950, and at the same rate of interest on the sum of \$6,800 from September 11, 1950, to and until October 20, 1950, and at the same

rate of interest on the sum of \$6,775, from October 21, 1950, until paid, together with the sum of \$900 on account of plaintiff's attorneys' fees and with costs to be taxed.

(2) Judgment is entered in favor of defendant on his first counter-claim against plaintiff in the sum of \$225.00.

(3) The second counter-claim of defendant against plaintiff is hereby dismissed with prejudice and without costs.

(4) The third counter-claim of defendant against plaintiff is hereby dismissed with prejudice and without costs.

(5) Prior Judgment entered herein on December 9, 1950, be, and the same is hereby vacated and set aside.

Dated and Entered this 4th day of January, 1951.

/s/ CLAUDE C. McCOLLOCH,
U. S. District Judge.

[Endorsed]: Filed Jan. 4, 1951.

District Court of the United States,
District of Oregon

Civil 5677

ADDISON G. HALL,

Plaintiff,

vs.

HENRY GARDNER,

Defendant.

EXECUTION

The President of the United States of America
To the United States Marshal of the District of
Oregon, or to his Deputy—Greeting:

Whereas, on the 4th day of January, A.D. 1951, by order of the District Court of the United States for the District of Oregon, in an action then pending in said Court, Addison G. Hall recovered a judgment against Henry Gardner, for the sum of Six Thousand Seven Hundred Seventy-five (\$6,775.00) Dollars, with interest thereon at the rate of 5 per cent per annum on the sum of \$7,000, from **March 25, 1949**, to and until December 19, 1949, and at the same rate of interest on the sum of \$6,900, from December 20, 1949, to and until August 29, 1950, and at the same rate of interest on the sum of \$6,850, from August 30, 1950, to and until September 10, 1950, and at the same rate of interest on the sum of \$6,800, from September 11, 1950, to and until October 20, 1950, and at the same rate of interest on the sum of \$6,775, from October 21, 1950, until

paid, together with the sum of \$900 on account of plaintiff's attorney's fees, and for the further sum of Seventy-nine and 66/100 (\$79.66) Dollars, costs and disbursements, which judgment was enrolled and docketed in the Clerk's office of said Court on the 4th day of January, 1951.

Now, Therefore, you are hereby commanded that out of the personal property of said Henry Gardner or if sufficient can not be found, then out of the real property belonging to said Henry Gardner in your District on or after the said 4th day of January, 1951, you satisfy the sum of Six Thousand Seven Hundred Seventy-five (\$6,775.00) Dollars now due on said judgment with interest thereon at the rate of 5 per cent per annum on the sums of money shown on the previous page and the further sum of Seventy-nine and 66/100 (\$79.66) Dollars costs and disbursements, and also the costs of and upon this writ and accruing costs, and that you make due return of the same into said Court within sixty days after you receive this writ.

Witness, the Honorable James Alger Fee and the Honorable Gus Solomon, Judges of said Court, and the seal of said Court affixed at Portland in said District, on this 16th day of January, 1951.

[Seal]

LOWELL MUNDORFF,
Clerk.

By F. L. BUCK,
Chief Deputy.

[Title of District Court and Cause.]

MOTION

Comes now the plaintiff, appearing by and through Hicks, Davis & Tongue and W. M. Dale, Jr., his attorneys, and based upon Rule 69 of the Federal Rules of Civil Procedure and Section 6-1704 O.C.L.A. and upon the affidavits attached hereto and by this reference made a part hereof, moves this Court for a warrant of arrest requiring the United States Marshal to arrest defendant as a judgment debtor and bring him before this Court.

HICKS, DAVIS & TONGUE,

/s/ W. M. DALE, JR.,

Attorneys for Plaintiff.

AFFIDAVIT

State of Oregon,

County of Multnomah—ss.

I, William J. Crawford, being first duly sworn, on oath depose and say:

1. That I am an attorney duly admitted to practice before the courts of the State of Oregon and the United States District Court for the District of Oregon.

2. That I represent Irvin P. Auker who formerly operated a real estate office located at 4612 S. E. Hawthorne Boulevard, Portland, Oregon.

3. That until on or about January 1, 1951, Henry Gardner occupied said real estate offices with Irvin

P. Auker for a period of approximately two years.

4. That I have been informed by my client, Irvin P. Auker, and therefore believe that said Auker was informed by Henry Gardner that said Gardner was leaving the State of Oregon at 3:00 p.m. on January 16, 1951, and was going to take up a permanent residence outside the State of Oregon and that he did not intend to return to the State of Oregon.

/s/ WM. J. CRAWFORD.

Subscribed and sworn to before me this 16th day of January, 1951.

[Seal] /s/ THOMAS H. TONGUE,
 Notary Public for Oregon.

My Commission Expires: 8/16/52.

AFFIDAVIT

State of Oregon,
County of Multnomah—ss.

I, William M. Dale, Jr., being first duly sworn, on oath depose and say:

1. That I am one of the attorneys for plaintiff in the above-entitled cause.

2. That on January 4, 1951, Honorable Claude McColloch, United States District Judge for the District of Oregon, duly entered a judgment against defendant Henry Gardner in the within-entitled cause; that the amount actually due on said Judgment as of January 15, 1951, including interest and

costs, is \$8,366.87; that no part of said judgment has been paid.

3. That I have been informed by William J. Crawford, attorney for Irvin P. Auker, a business associate of Henry Gardner and therefore believe that said Henry Gardner is permanently leaving the State of Oregon on or about 3:00 p.m., January 16, 1951.

4. That I am informed and therefore believe that Henry Gardner has property in the State of Oregon which he has refused to apply to such judgment; that said property includes certain furniture and household effects now packed for shipment out of the state, a certain 1949 Oldsmobile Sedan automobile, license No. 549-013, motor No. 84-1668, serial No. 499M-1324 and certain moneys deposited in the United States National Bank, Head Office, Portland, Oregon.

5. That plaintiff Addison G. Hall, because of the demands of his employment, is now temporarily in the State of Arizona but he has no permanent address so cannot be contacted in that area.

/s/ WILLIAM M. DALE, JR.

Subscribed and sworn to before me this 16th day of January, 1951.

[Seal] /s/ THOMAS H. TONGUE,
 Notary Public for Oregon.

My Commission Expires: 8/16/52.

[Endorsed]: Filed Jan. 16, 1951.

[Title of District Court and Cause.]

ORDER

This matter having come before the court upon motion of plaintiff for a warrant of arrest, the Court having examined the affidavits filed therewith and William M. Dale, Jr., an attorney of this court having made certificate of certain representations as to the facts in open court and it appearing to the Court that on January 4, 1951, judgment was entered against defendant in the amount of \$8,366.87; that said judgment has not been paid or satisfied and by said affidavits and said certificate that there is danger of said defendant leaving the state and that there is reason to believe that said defendant has property which he unjustly refuses to apply to said judgment and good cause appearing; now therefore

It Is Hereby Ordered that a warrant of arrest of defendant, Henry Gardner shall forthwith issue and the United States Marshal is hereby directed to arrest said defendant and bring him before this Court.

Dated this 16th day of January, 1951.

/s/ JAMES ALGER FEE,
United States District Judge.

[Endorsed]: Filed Jan. 16, 1951.

District Court of the United States,
District of Oregon

No. Civ. 5677

ADDISON G. HALL,

vs.

HENRY GARDNER.

COMMITMENT IN DEFAULT OF BAILThe United States of America,
District of Oregon—ss.The President of the United States to the Marshal
of the District of Oregon, or to his Deputy; and
to the Keeper of either of the Jails in our said
District, Greeting:

Whereas, Henry Gardner hath been arrested
upon a Bench Warrant duly issued out of said
Court, and hath this day been brought before said
Court and is now in the custody thereof; and
whereas, an order hath been duly made by said
Court that said defendant give bail in the sum of
Nine Thousand dollars, for his appearance, and that
in default thereof he be committed to the County
Jail of Multnomah County, Oregon, and whereas he
hath not given bail as required by said order.

Now, This Is to Command You, the said Marshal
or Deputy, to take and keep and safely deliver the
said defendant into the custody of the Keeper or
Warden in charge of said Jail forthwith.

And This Is to Command You, the said Keeper

or Warden in charge of the said Jail, to receive from the said Marshal or Deputy the said defendant so committed as aforesaid, and him keep and imprison in accordance with said order till he shall give bail or till he be otherwise discharged by law. Hereof fail not at your peril.

Witness the Honorable, James Alger Fee, the the Honorable Claude McColloch and the Honorable Gus J. Solomon, Judges of our said Court, and the seal thereof affixed at Portland, in said District, this 17th day of January, 1951.

[Seal]

LOWELL MUNDORFF,
Clerk.

By /s/ H. S. KENYON,
Deputy Clerk.

United States of America,
District of Oregon—ss.

In obedience to the command of the within writ, I have this 17th day of January, 1951, committed to the Multnomah County Jail the within named Henry Gardner, by delivering him to the keeper thereof.

JACK R. CAUFIELD,
U. S. Marshal.

By /s/ LEO McLAW,
Deputy.

[Endorsed]: Filed Jan. 23, 1951.

[Title of District Court and Cause.]

ORDER

Now, at this day comes the United States Marshal and produces the body of the defendant above named in obedience to the warrant of arrest heretofore issued and plaintiff appearing by and through W. M. Dale, Jr., of his attorneys, and defendant appearing in person and by William B. Murray, of his attorneys, and the defendant upon being brought before the Court and examined under oath, the Court finds as a fact that there is danger of defendant debtor leaving the state and the Court finds as a fact that the debtor defendant has property which he has unjustly refused to apply to the judgment;

Thereupon the Court Orders that the defendant enter into an undertaking in the sum of \$9,000, with one or more sureties conditioned that he will from time to time attend before the Court or Judge, as may be directed, and that the debtor defendant will not, during the pendency of the proceedings, dispose of any portion of his property not exempt from execution and in default thereof he be committed to the custody of the United States Marshal.

Dated this 17th day of January, 1951.

/s/ JAMES ALGER FEE,
United States District Judge.

[Endorsed]: Filed Jan. 25, 1951.

In the Matter of
United States District Court,
District of Oregon
No. Civil 5677

ADDISON G. HALL,

Plaintiff,

vs.

HENRY GARDNER,

Defendant.

Portland, Oregon, January 16, 1951

Before: Honorable James Alger Fee,
Judge.

Appearances:

WILLIAM M. DALE, JR.,
Of Attorneys for Plaintiff.

TRANSCRIPT OF PROCEEDINGS

The Court: I understand you have a motion for process.

Mr. Dale: Yes, your Honor.

The Court: This case was decided by Judge McColloch?

Mr. Dale: Yes, your Honor.

The Court: What kind of a case was it?

Mr. Dale: The case was originally instituted by plaintiff upon a promissory note. The defendant filed several counterclaims as affirmative defenses, all of which, except \$225 on the first counterclaim, were denied by Judge McColloch. Plaintiff was

awarded a judgment upon his note in the amount of \$6,775, and there are additional amounts of interest, attorney's fees and costs, which as of January 15th, amounted to \$8,366.87. [2*]

* * *

The Court: That is 6-1704. [5]

Mr. Dale: Yes, your Honor.

The Court: I have read it. It is not quite what you say.

Mr. Dale: I just read it this morning.

The Court: The Court has to be satisfied by affidavit or otherwise that there are reasonable grounds to believe.

Mr. Dale: Yes, that is correct, your Honor.

The Court: Have you got the order?

Mr. Dale: I have the order here, your Honor.

The Court: Let me set it.

The order will issue.

(Whereupon proceedings in the above matter on said day were concluded.)

* Page numbering appearing at top of page of original Reporter's Transcript of Record.

January 17, 1951

Appearances:

WILLIAM M. DALE, JR.,
Of Attorneys for Plaintiff.

WILLIAM B. MURRAY,
Of Attorneys for Defendant.

The Defendant HENRY GARDNER was present in person. [6]

The Court: You may proceed, Counsel.

Mr. Dale: Thank you, your Honor.

As your Honor knows, the defendant Henry Gardner has been brought before this Court pursuant to a warrant of arrest which was issued yesterday by your Honor pursuant to motion of plaintiff, through his attorneys, based upon the affidavits and based upon the Federal Rules of Civil Procedure, Section 69, and the Oregon statutes, pursuant to execution upon a judgment.

Does your Honor wish to proceed with testimony at this time?

The Court: I don't know. Counsel is here, I take it, for the defendant?

Mr. Murray: Yes, I appear for Mr. Gardner, your Honor. I, of course, am not apprised of the nature of the proceedings in that none of the papers or the charges have been served upon my client or upon me. The judgment in this case, as the files will show, is a judgment based upon a promissory note. It is not a type of judgment under which a body execution will issue.

The Court: Have you read the statute?

Mr. Murray: The absconding-creditor part of the statute. Of course, as I say, not being apprised of the nature of the charge, other than the fact that the defendant in this case was arrested and brought here before your Honor, I don't know [7] just what specific section the plaintiff proposes to proceed under.

The Court: Section 6-1704.

Mr. Murray: It seems to me that not only is this case an important one to this particular defendant, but it involves an important principle, and that is the extent to which a judgment debtor may be imprisoned for failure to pay a judgment.

The Court: You better read the statute and then you will know. You better read the statute first.

Mr. Murray: I have read the statute in the past, your Honor, and I am familiar with the section relating to—

The Court: Here is a copy of the statute. Pass it down and let him read it.

Mr. Murray: If the Court please, we would like to make a showing at this time to the effect that the defendant is not absconding or has no intention of absconding; that he does own real property in the state and is not concealing himself from the process of this Court and does not come within this section of the statute. He has in the past appeared in all of the proceedings in the case so far that have been brought before the Court. He has always been present when required to be present.

The Court: Let me have the statute. This pro-

vides for his examination on oath. You can place him on the stand and [8] examine him under oath and find out about this. [9]

* * *

The Court: I think at this time, as far as I am concerned, I will consider that the matter with reference to the statute has been sufficiently outlined at the present time so that I shall direct that the undertaking be given in accordance with the statute. I don't think I want to go any further and sit here for several hours to try this proceeding out. I think there is a sufficient showing at the present time so that, based upon the record, I shall direct that an undertaking be given as the statute requires.

Mr. Murray: And the amount of the undertaking, your Honor?

The Court: What will satisfy you?

Mr. Dale: Because of the attitude, your Honor, of the defendant, first of all in attempting to escape from the United States Marshal—

The Court: Never mind arguing it.

Mr. Dale: I would ask that the bond be set in the amount of the judgment, your Honor.

The Court: That will be the amount. I will do a little better than that because there might be some cost. What is the amount of the judgment?

Mr. Dale: As of January 15th \$8,366.87.

The Court: Make it \$9,000. In the meantime the defendant is remanded to the custody of the Marshal until the undertaking [30] is put up. I will be available at any time to justify the sureties.

(Whereupon proceedings in the above matter on said day were concluded.) [31]

The Court: Mr. McLean, will you take the stand?

LEO McLEAN

was thereupon produced as a witness, and, being first duly sworn, was examined and testified as follows:

The Court: Mr. Murray, will you come forward and take a seat at the counsel table? [32]

Mr. Murray: Yes, your Honor.

The Court: Mr. McLean, you are a United States Deputy Marshal?

A. Yes, sir; District of Oregon.

Q. Were you in court the other day when the case of Addison G. Hall, Plaintiff, vs. Henry Gardner, Defendant, Civil No. 5677, was before the court? A. Yes, sir.

Q. And at that time, pursuant to an order of Court, there had been a warrant of arrest issued for the Defendant Henry Gardner?

A. Yes, sir.

Q. After a hearing in court, the Court placed the Defendant Henry Gardner in custody, under an execution, because of the fact that the Court found that there was reasonable cause to believe he was attempting to conceal his property from execution and that he was attempting to escape from the state? A. Yes, sir.

Q. You took him into your custody at the time?

A. Yes.

(Testimony of Leo McLean.)

Q. Up until such time as he should, under the statute, deliver a bond for the payment of the money on an execution? A. Yes, sir.

Q. Where did you go then?

A. Where did we go from here? Directly to the jail, the [33] Multnomah County Courthouse.

Q. When you got over there what happened there?

A. When I got over there, I turned him over to the jailer at the Multnomah County Courthouse.

Q. Was there any search of his person?

A. Yes, sir. He delivered to the Multnomah County Courthouse the sum of money that he had.

Q. The Multnomah County Courthouse? Did he deliver it to you?

A. It wasn't delivered to me.

Q. What did he deliver?

A. It was kept with his property over there. All property taken from prisoners is kept at the Multnomah County Jail.

Q. Yes. What was it? A. A sum of money.

Q. How much?

A. In the neighborhood of \$1300.

Q. Did he deliver any moneys to anybody else?

A. Before we left the courtroom here, and after you had left the bench, and he was talking to his attorney, Mr. Murray, for a few minutes, he said, "You have got to arrange to get me out on bond."

Mr. Murray said, "You can't get out on bond unless you have got the money," and he said, "I

(Testimony of Leo McLean.)

have got some money," and he turned over to Mr. Murray, just from the conversation I [34] could hear, somewhere in the neighborhood of the sum of \$600.

Q. Did you see any money pass?

A. I didn't actually see. I seen him take something out of his pocket and pass it to Mr. Murray, and he said, "This six hundred ought to get me out."

The Court: Do you desire to examine, Mr. Murray?

Q. (By Mr. Murray): What was said about the \$600? Who said it?

A. I think Mr. Gardner said that some bail bondsman would get him out for about \$600, \$500 or \$600.

Q. Mr. Gardner did not say he had handed me \$600, did he?

A. He didn't say that he handed it. I saw him hand you something. He said, "That is \$600 in cash." He said he had the sum of about—he told you that he had some \$800 on him and he gave you—he said he would give you \$600.

Q. When did he say that?

A. When did he say that?

Q. Yes.

A. Shortly after the Court had told him he would be put in jail.

Q. Where was that?

A. Right there at the corner of the desk.

Mr. Murray: That is all.

(Testimony of Leo McLean.)

The Witness: I will tell you, your Honor, when we took [35] him over to jail he was searched. He voluntarily gave up the sum of \$135. \$1200 more was found concealed on his person.

The Court: Do you desire to examine further?

Mr. Dale: No questions, your Honor.

Mr. Murray: I think I should be sworn and testify as to what happened in this matter.

The Court: All right. Just a moment. Keep the Deputy Marshal on the stand for a moment.

Q. You did not report this matter to me, Mr. McLean? A. No, sir; I did not.

Q. All right. Did you realize, when the defendant was under arrest on that execution, that the Marshal was responsible under his bond for any money that passed out of his possession?

A. No, sir. I only thought at the time that the man was making arrangements to put up a bond.

Q. He was in your custody, though, placed in your custody by the Court? A. Yes.

Q. And anything he had on his person was in your custody. I suggest that you get hold of the money that was placed in the hands of Multnomah County or somebody else.

A. I immediately garnisheed all money in the hands—

The Court: Garnisheed it? How can you garnishee something in your possession, not in the possession of anybody else? [36] If you turn it over you are making a mistake. You get hold of that money right now; and if there was any money

(Testimony of Leo McLean.)

turned over, I will warn you right now that the Marshal is responsible on his bond for that. That is all.

(Witness excused.)

The Court: You can take the stand, Mr. Murray. I want to say to you when you take the stand that anything that you say may be used against you. You understand that?

Mr. Murray: I understand that. [37]

WILLIAM B. MURRAY

was thereupon produced as a witness and, being first duly sworn, testified as follows:

The Witness: My name is William B. Murray. I was called to appear for Mr. Gardner by the Clerk of this Court on a matter that I had no previous knowledge of.

I appeared in court in Mr. Gardner's behalf, and Mr. Gardner was arrested as an absconding creditor in a civil case. Mr. Gardner was examined on the witness stand. Bail was set at some \$9,000 for his release in lieu of his ability to pay the judgment.

After he was examined, I asked him in the courtroom here if he had means with which to pay for a bail bond premium or if he knew any person who could go his surety, and he knew of no one that he could get.

I told him it would be necessary for us to pay a premium and that I would undertake to apply for

(Testimony of William Murray.)

bail for him, and I asked him if he could raise any funds at all.

At that time he did pull out his purse and handed me the sum, not of \$600 but of \$200, for the purpose of paying the bail bond premium for him.

We then made an attempt to get bail for him, Mr. Gardner, in this case, and we were unable to arrange bail, and then he was seen subsequently by Mr. Hjelte and, inasmuch as the money had been given to us for a specific purpose, we did not apply it upon attorney's fees until he then signed an [38] authorization, and, as I understand it from my associates, the \$200 would be applied on account of attorney's fees. That is all.

I might add, further, as far as knowing that the defendant had any money at all, I didn't know that he had any at the time he was examined, and didn't learn that there was any money found on him, any further money in his clothing, until I had the hearsay report after the defendant was arrested and after he was confined to jail. I haven't seen Gardner personally since that time, but my associate has seen him.

The Court: Who is your associate?

The Witness: Mr. Reinmiller, George Reinmiller.

The Court: Do you wish to examine?

Mr. Dale: No questions, your Honor.

Mr. Murray: If the Court please, I would like at this time to be heard further on this matter if the Court would hear me.

(Testimony of William Murray.)

The Court: Yes, I will hear you.

Mr. Murray: At this time I would like to move the Court for an order quashing the writ of arrest ordered by the District Court of the United States in the case of Addison G. Hall vs. Henry Gardner, upon the ground and for the reason that the order is void, or voidable, and is contrary to the statutes of the State of Oregon.

The Court: I do not want to hear you on that, whether there [39] was a valid order in effect. It may be voidable, but there was a valid order in effect at the time.

The question you have to answer, however, is the question of taking money from a man who was committed on an execution for the purpose of applying any property to the satisfaction of a judgment; in other words, obstruction of the process of the Court. That is what you have to answer, and that is what I will hear you on, if you want to say something about that.

Mr. Murray: May I ask the Court for time in which to answer that particular charge? At this time, I have had no—

The Court: All right. If you haven't anything to say on that subject, I will tell you what I am going to do about it.

I now order you committed to the custody of the United States Marshal and placed in his custody. I will place that order in effect at 6:00 o'clock tonight. If, in the meantime, you have placed the money that you took from the prisoner in the hands

(Testimony of William Murray.)

of the Marshal, then at any time I will hear you upon this other matter.

Mr. Murray: Upon the motion to vacate the order, your Honor?

The Court: Yes. I suggest that you make your first order of business getting the money back in the hands of the Marshal. You are committed, subject to the condition that you pay it back. [40]

Mr. Murray: I can do that forthwith, your Honor.

The Court: All right.

(Mr. Murray then turned over a sum of money, in currency, to the United States Marshal.)

Mr. Murray: May I proceed to present—

The Court: All right. How much money did you get, Mr. Marshal?

U. S. Marshal Caulfield: \$200.

The Court: That is all you took from him?

Mr. Murray: That is all, your Honor.

The Court: Now then, I am going to place the other implications of this matter in the hands of the Bar of this Court, and am going to suggest that the Committee on Discipline of the Bar, appointed by this Court, examine this matter and see if there is any further implication.

I will hear this other matter, but I will hear it in due course. I have a great many other matters coming on before the Court. I have taken this matter up as an emergency. I shall hear you upon that

(Testimony of William Murray.)

other matter, because, in my idea of this, this is not a proceeding for imprisonment for a debt, and I will take up the question of whether or not the order was void, and if there are not some terms upon which you can release your client.

I may also say in that connection there is something else, and that is your attorney's fee in this. The mistake [41] you made was in not presenting that matter to the Court, because the Court would have protected you in the matter of attorney's fees, if that had been the situation. As I understand it, you did not take it for that purpose, in the first instance?

Mr. Murray: That is right. It was originally given me for bail; the specific purpose was not to apply as attorney's fees.

The Court: I understand your statement on that, and I say that is the error that you committed in taking it for any purpose whatsoever, in view of the commitment. I think it is a very serious matter, and I am going to pass it over to the hands of the Bar, as far as any other implications are concerned. I am not going to deal with that myself.

I may say, as far as your client is concerned, I think there is reasonable ground now to present the matter as to whether I could not release him in any event, if there are any terms upon which the Court can properly release him.

As far as attorney's fees are concerned, you have the right to make an application to the Court, because the money is in *custodia legis*, and I think I

(Testimony of William Murray.)

would have the right to pay you for defending him. These things, where the money is in custodia legis, must be done through the machinery of the Court and cannot be done by any machinery of self-help. Therefore, I will dismiss the proceeding at present and will [42] take it up at any time you may apply during the course of the day, when we arrive at disposition of the other matters before the Court.

Mr. Murray: I am now ready to argue the invalidity of the order at any time that suits your Honor's convenience, if your Honor will set the time.

The Court: I can't tell you what the time will be. I have a great many other obligations.

(The Court then proceeded to the transaction of other business.) [43]

January 22, 1951

Present: Mr. William M. Dale, Attorney for Plaintiff. Mr. William B. Murray, Attorney for Defendant.

The Court: I will discuss the question when he gets here.

Mr. Murray: This will be on a motion, your Honor.

The Court: Any questions you want to raise. I think probably your client should be in court.

Mr. Murray: Yes, I think so, too, your Honor. I would like to have him here.

The Court: I think we can take it up at 10:00 o'clock tomorrow morning. My calendar is very crowded this afternoon.

Mr. Murray: Would Wednesday suit your Honor's convenience?

The Court: Yes.

Mr. Murray: That would suit me better, your Honor, because I have to appear in the Supreme Court tomorrow to argue a case.

The Court: Very well.

Mr. Dale: Wednesday at 10:00 o'clock is fine.

The Court: Wednesday at 10:00 o'clock. I will not only consider the question of whether the order is invalid but also [43] consider the question of whether there is any way in which you can give reasonable security for his bond and release. I don't want to have it look like this is imprisonment for a debt, because it is not. I, of course, want to make reasonable assurance to Counsel that he can collect his judgment. I will take up that question and if you have any suggestions at that time as to how that can be worked out, I will be glad to give it consideration.

Mr. Murray: Relative to the question of attorney's fees, I might say, your Honor, I did not try this case originally. It was tried by my associate in the office, and when I was called I was not familiar with the background of this case. Inasmuch as my associate was busy, I answered the call and came up here at your Honor's request. I will say, however, I think I did assist in the preparation of the

pre-trial order, and probably my name appears as one of the attorneys of record in that case originally.

The Court: It was not at my request. I do not usually send you a request. I send you orders, but it was not my request. It was at the defendant's request that you be called. We just transmitted the call as a courtesy.

Mr. Murray: Thank you very much. Also, as to the question of attorney's fees, would the Court entertain a petition for the allowance of attorney's fees?

The Court: Yes, I will entertain it. [44]

Mr. Dale: Would your Honor also possibly consider a motion on behalf of the plaintiff to conduct further supplemental proceedings?

The Court: Yes. I will consider the whole question. If there is any way it can be done, with reasonable safety to you, I will let this man out of confinement. Likewise, I think you ought to investigate the situation and see if you cannot carry out proper measures to protect yourself.

Mr. Dale: We are going to.

The Court: Likewise, the question of the disposition of this fund which is now in the hands of the Marshal; the question of whether I should allow Mr. Murray a fee will also be submitted on Wednesday at 10:00 o'clock.

(The Court is in recess.) [45]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Appellant: William B. Murray, 525 Failing Building, Portland 4, Oregon.

Attorney for Appellant: William B. Murray, 525 Failing Building, Portland 4, Oregon.

Generally stated, the offense charged was contempt of court in taking money from a man who was committed on an execution for the purpose of applying any property to the satisfaction of a judgment; in other words, obstruction of the process of the court.

A concise statement of the orders appealed from, their respective dates and the sentence imposed, is as follows:

January 22, 1951—Order finding appellant guilty of contempt of court as charged.

January 22, 1951—Order committing appellant to the custody of United States Marshal subject to condition that appellant pay to United States Marshal the sum of \$200.00.

January 22, 1951—Order referring matter to the Committee on Discipline of the Bar appointed by the court.

January 22, 1951—Ensuing public reprimand by the Judge in open court.

I, the above named appellant, hereby appeal to the United States Court of Appeals for the Ninth

Circuit from the above-stated orders and reprimand and each of them.

Dated January 31, 1951.

/s/ WILLIAM B. MURRAY.

Appellant.

[Endorsed]: Filed Jan. 31, 1951.

CLERK'S CERTIFICATE

United States of America,
District of Oregon—ss.

I, Lowell Mundorf, Clerk of the United States District Court for the District of Oregon, do hereby certify that the foregoing documents consisting of Amended judgment order, praecipe for execution, execution, motion for warrant of arrest, affidavit of William J. Crawford, affidavit of William N. Dale, Jr., Order for warrant of arrest, warrant of arrest, order for defendant to give bond, commitment in default of bail, motion for order of release, order releasing defendant, order allowing attorney to withdraw, notice of appeal, bond on appeal, points upon which appellant will rely, designation of contents of record, affidavit of William B. Murray, transcript of docket entries, and this certificate of clerk, constitute the record on appeal from an order of contempt, in a cause therein numbered Civil 5677, in which Addison G. Hall is Plaintiff, and Henry Gardner is Defendant, Appellant William B. Murray appearing as attorney for Defendant.

ant Henry Gardner; that the said record has been prepared by me in accordance with the designation of contents of record on appeal filed by the appellant, and in accordance with the rules of this court.

I further certify that there is enclosed herewith duplicate transcript of proceedings dated January 16, 17, 22, 24, 25 and 26, 1951, filed in this office in this cause.

I further certify that the cost of filing notice of appeal is \$5.00 and has been paid by the appellant.

In Testimony Whereof I have hereunto set my hand and affixed the seal of said court in Portland, in said District, this 14th day of February, 1951.

By /s/ F. L. BUCK,
Chief Deputy.

[Endorsed]: No. 12854. United States Court of Appeals for the Ninth Circuit. In the matter of William B. Murray, Appellant. Transcript of Record. Appeal from the United States District Court for the District of Oregon.

Filed February 16, 1951.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the
Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit
No. 12854

ADDISON G. HALL,

Plaintiff,

vs.

HENRY GARDNER,

Defendant,

IN RE WILLIAM B. MURRAY,

Appellant.

POINTS UPON WHICH
APPELLANT WILL RELY

Statement of Points

Comes now William B. Murray, appellant above named, and hereby designates the following points on which he intends to rely:

1. An order dismissing contempt proceedings against an attorney followed by an unwarranted undeserved public reprimand is a "final order" reviewable on appeal.
2. The process referred to by the Court as "committed on an execution," i.e., execution against the person and body of the defendant, in the charge of contempt¹ is in fact non-existent in this case.

¹The charge of contempt of January 22, 1951, as pronounced by the Court, "The question you have to answer, however, is the question of taking money from a man who was committed on an execution for the purpose of applying any property to the satisfaction of a judgment; in other words, obstruction of the process of the Court."

The process actually issued by the Clerk was "commitment in default of bail" of a judgment debtor for non-compliance with the court's order to post bail for his appearance.² There was no other process of the court involved in the contempt of court proceedings against appellant.

3. Even if defendant had been "committed on an execution," such execution does not prevent judgment debtor from transferring his property in absence of an order restraining him from doing so, nor would such process prevent appellant from lawfully accepting money from such judgment debtor under Oregon law.

4. The Court erred in finding appellant guilty of contempt of court when appellant was doing what it was his duty to do and what he had the right to do, i.e., accepting \$200.00 from judgment debtor for the purpose of assisting debtor in carrying out court's order to post bail for debtor's appearance.

²Commitment in default of bail issued January 17, 1951 (omitting formal parts), recites: "... Whereas, an order hath been duly made by said Court that said defendant give bail in the sum of \$9,000.00, for his appearance and that in default thereof he be committed to the County Jail of Multnomah County, Oregon, and, Whereas, he hath not given bail as required by said order . . . and this is to command you, the said Keeper or Warden in charge of the said Jail, to receive from the said Marshal or Deputy the said defendant so committed as aforesaid, and him keep and imprison in accordance with said order till he shall give bail or till he be otherwise discharged by law.

5. The District Court erred in ordering commitment of appellant to custody of United States Marshal subject to condition that appellant pay to United States Marshal the sum of \$200.00.

6. The District Court erred in referring matter to Committee on Discipline of the Bar appointed by the Court when appellant did nothing he did not have a lawful right to do and was not guilty of any specific act of non-feasance or misfeasance nor breach of any ethical rule of conduct.

7. The District Court erred in publicly reprimanding appellant in open court after dismissing contempt proceedings against appellant.

8. The District Court erred in summarily trying appellant for contempt of court when the Judge failed to certify that he saw or heard the conduct constituting the contempt and that it was committed in the actual presence of the Court and when the order and findings of contempt failed to recite the facts and have not been signed and entered of record.

9. The District Court erred in prosecuting said contempt proceedings against the appellant without notice, without stating the time and place of the hearing, and without giving the appellant a reasonable time as requested by appellant for the preparation of his defense.

10. The District Court erred in the charge of contempt pronounced in open court in that the charge so pronounced did not contain essential

facts of nonfeasance or misfeasance constituting contempt, nor was the charge described as a criminal contempt. Past acts of misfeasance or nonfeasance which may constitute contempt of court can only be prosecuted upon proper notice to the contemptonor.

/s/ WILLIAM B. MURRAY,
Attorney for Appellant.

State of Oregon,
County of Multnomah—ss.

Due service of the within Points Upon Which Appellant Will Rely is hereby accepted in Multnomah County, Oregon, this 19th day of February, 1951, by receiving a copy thereof, duly certified to as such by William B. Murray, Attorney for Appellant.

/s/ W. M. DALE, JR.,
Attorney for Appellee.

State of Oregon,
County of Multnomah—ss.

I, William B. Murray, being first duly sworn, depose and say:

That I am attorney for appellant and that I did on the 19th day of February, 1951, deposit in the United States Mail in an envelope with first-class postage thereon prepaid addressed to Henry L. Hess, United States Attorney for the District of Oregon, United States Court House, Portland, Ore-

gon, certified copy of the within Points Upon Which Appellant Will Rely.

Furthermore deponent saith not.

/s/ W. B. MURRAY.

Subscribed and sworn to before me this 19th day of February, 1951.

[Seal] /s/ EDITH C. SCHULZ,
Notary Public for Oregon.

My Commission Expires: April 25, 1954.

[Endorsed]: Filed Feb. 21, 1951.

[Title of Court of Appeals and Cause.]

DESIGNATION OF CONTENTS
OF RECORD ON APPEAL

Comes now William B. Murray, the appellant above named, and respectfully designates for inclusion in the printed record on appeal to the United States Court of Appeals for the Ninth Circuit the complete record of all proceedings and evidence in the contempt of court proceedings against the appellant omitting argument of counsel but including the following:

1. A list of all docket entries from June 29, 1950.
2. All of the evidence and proceedings at the trial or hearing on the contempt charge against appellant above named, stenographically reported

excepting arguments of counsel, including all of the following appearing on the page numbers designated in said record stenographically reported as follows:

- a. January 16, 1951, Tuesday, Record of hearing, pp. 1 and 6.
- b. (1) Record of hearing, January 17, 1951, Wednesday, pp. 7 and 8 (omitting examination of judgment debtor). Also line 1, page 9.
(2) Ruling of the Court, pp. 30 and 31.
- c. January 22, 1951, Monday, copy pp. 32 to 43, inclusive, being all of the testimony and the entire record stenographically reported concerning the contempt proceedings.
3. Amended judgment as entered in lien docket January 6, 1951.
4. Writ of execution on the personal and real property of the defendant Henry Gardner issued to the United States Marshal on January 16, 1951.
5. Plaintiff's motion for warrant of arrest of defendant Henry Gardner as judgment debtor and to bring him before the court, together with supporting affidavits filed January 16, 1951.
6. Order directing that a warrant of arrest of defendant Henry Gardner issue and directing the United States Marshal to arrest the defendant and bring him before the court dated and filed January 16, 1951.
7. Commitment in default of bail wherein it is recited that defendant Henry Gardner give bail in

the sum of \$9,000.00 for his appearance and that in default thereof he be committed. Issued January 17, 1951; filed January 23, 1951.

8. Order fixing bond and for commitment erroneously dated January 17, 1951. Filed January 25, 1951.

/s/ **W. B. MURRAY,**
Attorney for Appellant.

Service accepted.

[Endorsed]: Filed Feb. 21, 1951.